

- ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

Section III

Statutory Framework

5. Section 608 of the Act, 42 U.S.C. § 7671g, and the regulations at 40 C.F.R. § 82.161(a) provide in applicable part that effect November 14, 1994, technicians, except technicians who successfully completed voluntary certification programs that apply for approval under § 82.161(g) by December 9, 1994, must be certified by an approved technician certification program under the requirements of this paragraph (a). Effective May 15, 1995, all technicians must be certified by an approved technician certification program under the requirements of this paragraph (a).

GENERAL ALLEGATIONS

6. The Respondent and Respondent's employee Brian Damron, are each a "person" as defined in Section 302(e) of the Act, U.S.C. § 7602(e).
7. The Respondent's employee, Brian Damron, is a "technician" as defined at 40 C.F.R. § 82.152.
8. Respondent's employee, Brian Damron, maintains, services, and repairs appliances.

Violation

9. The Complainant hereby states and alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Act, as follows:

Count I

10. From on or about July 3, 2001, to June 13, 2002, Respondent, by its employee, Brian Damron, performed service, maintenance or repair on heating, venting and air-conditioning systems (HVACS) approximately thirty-six (36) times from July 3, 2001, to June 13, 2002.
11. On the dates above, Respondent's employee, Brian Damron, was not a certified technician as required by 40 C.F.R. § 82.161(a) pursuant to the Section 113(d) of the Act, 42 U.S.C. § 7413(d).
12. Respondent's failure to comply with the requirements of 40 C.F.R. § 82.161(a) above is a violation of Section 608 of the Act, 42 U.S.C. § 7671g, and said violation renders Respondent liable for civil penalties pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Section IV

Relief

13. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil penalty of up to \$27,500 per day for each violation of the Act. The penalty proposed below is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violation in accordance with the Clean Air Act, Section 113(e) 42 U.S.C. § 7413(e) and the Stationary Source Civil Penalty Policy, October 25, 1991 ("Penalty Policy"), including Appendix X, copies of which are enclosed with this Complaint. Appendix X is entitled "Penalty for violation of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair and Disposal of Appliances Containing Refrigerant."

PROPOSED PENALTY

14. For the violations stated herein, it is proposed that a penalty of \$16,000 be assessed. The proposed penalty was determined by calculation in accordance with the statutory requirement of Section 113(e) of the Act, 42 U.S.C. § 7413(e), and the enclosed Penalty Policy, by combining the factors in the policy including the size of Respondent's business, the economic benefit of noncompliance and any willfulness of the Respondent. Below are short statements of the reasoning behind the various penalty factors and adjustments used in the calculation of the proposed penalty.

The economic benefit component, calculated under Appendix X is \$100 for the cost of avoiding technician training and certification for a period of approximately one year. See Appendix X.

The gravity component for Count I is \$9,900, for major potential for harm, and for major extent of deviation from Section 608 regulations. See Appendix X.

The size of violator component was calculated under Appendix X for this proposed penalty assessment using a multiplier of 1.6 resulting in an upward adjustment in the gravity component of \$6,000. See Appendix X.

The total proposed penalty is derived by combining the total gravity component of \$9,900 with the economic benefit component of \$100, with the size of violator component adjustment of \$6,000, for a total penalty of \$16,000.

15. The Complaint was drafted based upon the best information available to Complainant, including financial information, and in consideration of, and in accordance with, the statutory requirements of Section 113(e) of the Act, 42 U.S.C. § 7413(e), and the enclosed Penalty Policy.

16. The proposed penalty set forth in paragraph 14 constitutes a demand *only if the Respondent fails to raise bona fide issues of ability to pay, or other bona fide affirmative defenses relevant to the determination of any final penalty.*
17. Said issues of ability to pay or other affirmative defenses relevant to a final penalty, may and should be brought to the attention of the Complainant at the earliest opportunity in this proceeding.
18. Payment of the total penalty may be made by certified or cashier's check payable to the Treasurer, United States of America, and remitted to:

Mellon Bank
EPA-Region VII
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

NOTICE OF OPPORTUNITY FOR HEARING

Section V

Answer and Request for Hearing

19. Pursuant to Section 113(d)(2) of the Act, Respondent has the right to request a hearing to contest any material fact contained in this Complaint. To preserve this right, Respondent must file a written answer and request for hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:
 - a. The circumstances or arguments that are alleged to constitute the grounds of defense;
 - b. The facts that Respondent intends to place at issue, and
 - c. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

20. If Respondent requests a hearing, it shall be held and conducted in accordance with Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Orders, and the Revocation or Suspension of Permits (40 C.F.R. Part 22). (Copy enclosed.)
21. If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under the Act. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.
22. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Regional Judicial Officer, Administrator Law Judge, or any person likely to advise these officials in the decision of this case.

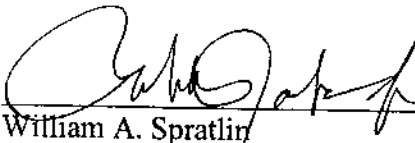
Section VI

Settlement Conference


23. Whether or not a Respondent requests a hearing, a Respondent may request an informal settlement conference to discuss the facts of this case and settlement. To request an informal settlement conference, contact Henry F. Rompage, Attorney, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, telephone (913) 551-7280.
24. A request for an informal settlement conference does not extend the time to answer. Whether or not the informal settlement conference is pursued, to preserve the right to hearing a written answer and request for a hearing must be filed within thirty (30) days of service of this Complaint.
25. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement and a Consent Order will be issued by the Regional Administrator, United States Environmental Protection Agency, Region VII.

In the Matter of:
Cook's Heating and Air Conditioning, Inc.

Date: 1-22-83



William A. Spratlin
Director
Air, RCRA, and Toxics Division



Henry F. Rompage
Attorney
Office of Regional Counsel

Enclosures:

Consolidated Rules of Practice
Clean Air Act Penalty Policy
Penalty Policy Calculation
Appendix X. Penalty Policy For Violations of 40 C.F.R. Part 82, Subpart F: Maintenance,
Service, Repair and Disposal of Appliances Containing Refrigerant.

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas, 66101; and a true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing, Consolidated Rules of Practice, the Clean Air Act Penalty Policy, were mailed by certified mail, return receipt requested, on this 23rd day of January, 2003 to:

Gerry Cook
Registered Agent
Cook's Heating and Air Conditioning, Inc.
2215 South West Street
Wichita, Kansas 67213

Debby Buffington White
Legal Technician

August 27, 2002

PENALTY CALCULATION SHEET

FOR

COOK'S HEATING & AIR CONDITIONING, INC.

ECONOMIC BENEFIT COMPONENT

Economic benefit of avoiding cost of technician
training and certification for 12 months

\$ 100.00

GRAVITY COMPONENT

COUNT I

VIOLATION OF § 82.161(a)

uncertified technician performing services
(from moderate/major cell)
(Appendix X)

\$ 9,000.00

Upward Adjustment of Gravity Component*

* .10

\$ 900.00

\$ 9,900.00

Size of Violator (net worth is \$467,972) ÷ \$300K
results in a multiplier of 1.6.

x 1.6

\$ 16,000.00

Total Proposed Penalty

\$ 16,000.00

(Economic Benefit [EB] + Gravity [GVTY] x Size of Violator [SOV]
= Total Proposed Penalty [TPP])

Penalties calculated in accordance with Appendix X of the Clean Air Act Civil Penalty Policy For
Violations of 40 C.F.R. Part 82, Subpart F